

# **ENGROSSED** SENATE BILL No. 360

DIGEST OF SB 360 (Updated March 22, 2005 3:57 pm - DI 77)

**Citations Affected:** IC 5-10; IC 16-18; IC 16-40; IC 20-5; IC 20-10.1; IC 27-8; IC 27-13; noncode.

**Synopsis:** Obesity. Removes language in the morbid obesity definition that refers to weight guidelines in the Metropolitan Life Insurance table. Specifies certain requirements for coverage for surgical treatment of morbid obesity under: (1) a state employee health plan; (2) an accident and sickness insurance policy; and (3) a health maintenance organization contract. Requires monitoring of patients and reporting of specified information by physicians to the state department of health. Requires school boards to establish a coordinated school health advisory council to develop a local wellness policy that complies with certain federal requirements. Requires the department of education to provide information concerning health, nutrition, and physical activity. Requires that foods and beverages available for sale to students outside the federal school meal programs must meet certain requirements. Provides that the requirements do not apply after school hours or to fundraisers. Requires daily physical activity for elementary school students in public schools. Creates certain exceptions to the daily physical activity requirement. Allows a school to continue a vending machine contract in existence before the passage of the bill. Phases in the percent of foods and beverages that must qualify as healthy.

**Effective:** Upon passage; July 1, 2005.

## Miller

(HOUSE SPONSORS — BECKER, BROWN C)

January 11, 2005, read first time and referred to Committee on Health and Provider

February 3, 2005, amended, reported favorably — Do Pass.
February 17, 2005, read second time, ordered engrossed.
February 18, 2005, engrossed.
February 21, 2005, returned to second reading.
February 28, 2005, reread second time, amended, ordered engrossed.

March 1, 2005, re-engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 14, 2005, read first time and referred to Committee on Public Health. March 24, 2005, amended, reported — Do Pass.



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

# ENGROSSED SENATE BILL No. 360

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 5-10-8-7.7 IS AMENDED TO READ AS
2	FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7.7. (a) As used in this
3	section, "covered individual" means an individual who is covered
4	under a health care plan.
5	(a) (b) As used in this section, "health care plan" means:
6	(1) a self-insurance program established under section 7(b) of this
7	chapter to provide group health coverage; or
8	(2) a contract entered into under section 7(c) of this chapter to
9	provide health services through a prepaid health care delivery
10	plan.
11	(b) (c) As used in this section, "health care provider" means a:
12	(1) physician licensed under IC 25-22.5; or
13	(2) hospital licensed under IC 16-21;

(c) (d) As used in this section, "morbid obesity" means:

(1) a weight of at least two (2) times the ideal weight for frame,

that provides health care services for surgical treatment of morbid



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obesity.

1	age, height, and gender, as specified in the 1983 Metropolitan	
2	Life Insurance tables;	
3	(2) (1) a body mass index of at least thirty-five (35) kilograms per	
4	meter squared, with comorbidity or coexisting medical conditions	
5	such as hypertension, cardiopulmonary conditions, sleep apnea,	
6	or diabetes; or	
7	(3) (2) a body mass index of at least forty (40) kilograms per	
8	meter squared without comorbidity.	
9	For purposes of this subsection, body mass index is equal to weight in	_
10	kilograms divided by height in meters squared.	4
11	(d) (e) Except as provided in subsection (f), the state shall provide	
12	coverage for nonexperimental, surgical treatment by a health care	
13	provider of morbid obesity:	
14	(1) that has persisted for at least five (5) years; and	
15	(2) for which nonsurgical treatment that is supervised by a	
16	physician has been unsuccessful for at least eighteen (18)	
17	consecutive months.	
18	(f) The state may not provide coverage for surgical treatment of	
19	morbid obesity for a covered individual who is less than twenty-one	
20	(21) years of age unless two (2) physicians licensed under	
21	IC 25-22.5 determine that the surgery is necessary to:	
22	(1) save the life of the covered individual; or	
23	(2) restore the covered individual's ability to maintain a	
24	major life activity (as defined in IC 4-23-29-6);	_
25	and each physician documents in the covered individual's medical	
26	record the reason for the physician's determination.	
27	SECTION 2. IC 16-18-2-240.5 IS ADDED TO THE INDIANA	
28	CODE AS A <b>NEW</b> SECTION TO READ AS FOLLOWS	\
29	[EFFECTIVE JULY 1, 2005]: Sec. 240.5. "Morbid obesity", for	
30	purposes of IC 16-40-3, has the meaning set forth in IC 16-40-3-1.	
31	SECTION 3. IC 16-40-3 IS ADDED TO THE INDIANA CODE AS	
32	A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY	
33	1, 2005]:	
34	Chapter 3. Reporting of Deaths or Complications From Morbid	
35	Obesity Surgeries	
36	Sec. 1. As used in this chapter, "morbid obesity" means:	
37	(1) a body mass index of at least thirty-five (35) kilograms per	
38	meter squared, with comorbidity or coexisting medical	
39	conditions such as hypertension, cardiopulmonary conditions,	
40	sleep apnea, or diabetes; or	
41	(2) a body mass index of at least forty (40) kilograms per	
42	meter squared without comorbidity.	



1	For purposes of this section, body mass index is equal to weight in
2	kilograms divided by height in meters squared.
3	Sec. 2. (a) A physician who is licensed under IC 25-22.5 and who
4	performs a surgical treatment for the treatment of morbid obesity
5	shall:
6	(1) monitor the patient for five (5) years following the
7	patient's surgery; and
8	(2) report:
9	(A) to; and
10	(B) in a manner prescribed by;
11	the state department any death or serious complication of the
12	patient.
13	(b) The report required in subsection (a) must include the
14	following information:
15	(1) The gender of the patient.
16	(2) The name of the physician who performed the surgery.
17	(3) The location where the surgery was performed.
18	(4) Information concerning the death or complication and the
19	circumstances in which the death or complication occurred.
20	Sec. 3. (a) The state department shall collect and maintain the
21	information reported to the state department under section 2 of
22	this chapter.
23	(b) The reports made under section 2(a)(2) of this chapter are
24	public records and are subject to public inspection. However, the
25	state department may not release any information contained in the
26	reports that the state department determines may reveal the
27	patient's identity.
28	Sec. 4. A physician who knowingly violates this chapter may be
29	subject to disciplinary sanctions under IC 25-1-9 as if the physician
30	had knowingly violated a rule adopted by the medical licensing
31	board under IC 25-22.5-2-7.
32	Sec. 5. The state department shall adopt rules under IC 4-22-2
33	necessary to implement this chapter.
34	Sec. 6. This chapter expires June 30, 2010.
35	SECTION 4. IC 20-5-13-10 IS ADDED TO THE INDIANA CODE
36	AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
37	1, 2005]: Sec. 10. (a) Before July 1, 2006, each school board shall
38	establish a coordinated school health advisory council. The
39	advisory council shall develop a local wellness policy that complies
40	with the requirements under federal Public Law 108-265 and
41	IC 5-22-15-24(c). The advisory council must hold at least one (1)



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hearing that allows public testimony.

1	(b) The school board shall appoint the members of the advisory
2	council, which must include parents, food service directors and
3	staff, students, nutritionists or certified dietitians, health care
4	professionals, school board members, a school administrator, and
5	representatives of interested community organizations. However,
6	a person who represents a food manufacturer or marketer or a
7	person with a conflict of interest or a financial interest in selling
8	food in schools may not serve on the advisory council.
9	(c) The school board shall adopt a school district policy on child
10	nutrition and physical activity that takes into consideration the
11	advisory council's recommendations.
12	(d) The department shall, in consultation with the state
13	department of health, provide technical assistance to coordinated
14	school health advisory councils, including providing information
15	on health, nutrition, and physical activity, through educational
16	materials and professional development opportunities. The
17	department shall provide the information given to a coordinated
18	school health advisory council under this subsection to a school or
19	parent upon request.
20	SECTION 5. IC 20-5-13-11 IS ADDED TO THE INDIANA CODE
21	AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22	1, 2005]: Sec. 11. (a) This section does not apply to a food or
23	beverage item that is:
24	(1) part of a school lunch program or a school breakfast
25	program;
26	(2) sold in an area that is not accessible to a student;
27	(3) sold after normal school hours; or
28	(4) sold or distributed as part of a fundraiser conducted by
29	students, teachers, school groups, or parent groups, if the food
30	or beverage is not intended for student consumption during
31	the school day.
32	(b) A vending machine at an elementary school that dispenses
33	food or beverages may not be accessible to a student.
34	(c) At least fifty percent (50%) of the foods and beverages
35	available for sale at school or on the school grounds must qualify
36	as a healthy food or a healthy beverage. Food and beverage items
37	must meet the following qualifications:
38	(1) The following do not qualify as healthy beverages:
39	(A) Soft drinks, punch, iced tea, and coffee.
40	(B) Fruit or vegetable based drinks that contain less than
41	fifty percent (50%) real fruit or vegetable juice or that

contain additional caloric sweeteners.



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1	(C) Except for low-fat and fat-free chocolate milk, drinks	
2	that contain caffeine.	
3	(2) The following qualify as healthy beverages:	
4	(A) Fruit or vegetable based drinks that contain at least	
5	fifty percent (50%) real fruit or vegetable juice or that do	
6	not contain additional caloric sweeteners.	
7	(B) Water and seltzer water that do not contain additional	
8	caloric sweeteners.	
9	(C) Low-fat and fat-free milk, including chocolate milk,	
10	soy milk, rice milk, and other similar dairy and nondairy	
11	calcium fortified milks.	
12	(3) Foods that meet the following standards are considered	
13	healthy foods:	
14	(A) Not more than thirty percent (30%) of their total	
15	calories are from fat.	
16	(B) Not more than ten percent (10%) of their total calories	
17	are from saturated and trans fat.	
18	(C) Not more than thirty-five percent (35%) of their	
19	weight is from sugars that do not occur naturally in fruits,	
20 21	vegetables, or dairy products. (D) Are limited to the following portion sizes:	
22	(i) One and one quarter (1.25) ounces for potato chips,	
23	crackers, popcorn, cereal, trail mixes, nuts, seeds, dried	
24	fruit, and jerky.	
25	(ii) Two (2) ounces for cookies and cereal bars.	
26	(iii) Three (3) ounces for bakery items, including	
27	pastries, muffins, and donuts.	
28	(iv) Three (3) fluid ounces for frozen desserts, including	V
29	ice cream.	
30	(v) Eight (8) ounces of nonfrozen yogurt.	
31	(vi) Twelve (12) ounces for beverages, except water.	
32	(vii) Entree items and side dish items, including french	
33	fries and onion rings, may not exceed the portions for	
34	those foods when served as part of the school lunch	
35	program or school breakfast program.	
36	SECTION 6. IC 20-10.1-4-5.5 IS ADDED TO THE INDIANA	
37	CODE AS A <b>NEW</b> SECTION TO READ AS FOLLOWS	
38	[EFFECTIVE JULY 1, 2005]: Sec. 5.5. (a) This section does not	
39	apply to:	
40	(1) students who are in half-day kindergarten; or	
11	(2) a student who has a medical condition that precludes	
12	narticination in the daily physical activity provided under this	



1	section.
2	(b) Beginning in the 2005-2006 school year, the governing body
3	of each school corporation shall provide daily physical activity for
4	students in elementary school. The physical activity must be
5	consistent with the curriculum and programs developed under
6	IC 20-1-1.1-7 and may include the use of recess. On a day when
7	there is inclement weather or unplanned circumstances have
8	shortened the school day, the school corporation may provide
9	physical activity alternatives or elect not to provide daily physical
10	activity.
11	SECTION 7. IC 27-8-14.1-3 IS AMENDED TO READ AS
12	FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this
13	chapter, "morbid obesity" means:
14	(1) a weight of at least two (2) times the ideal weight for frame,
15	age, height, and gender, as specified in the 1983 Metropolitan
16	Life Insurance tables;
17	(2) (1) a body mass index of at least thirty-five (35) kilograms per
18	meter squared, with comorbidity or coexisting medical conditions
19	such as hypertension, cardiopulmonary conditions, sleep apnea,
20	or diabetes; or
21	(3) (2) a body mass index of at least forty (40) kilograms per
22	meter squared without comorbidity.
23	For purposes of this section, body mass index is equal to weight in
24	kilograms divided by height in meters squared.
25	SECTION 8. IC 27-8-14.1-4 IS AMENDED TO READ AS
26	FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as
27	provided in subsection (b), an insurer that issues an accident and
28	sickness insurance policy shall offer coverage for nonexperimental,
29	surgical treatment by a health care provider of morbid obesity:
30	(1) that has persisted for at least five (5) years; and
31	(2) for which nonsurgical treatment that is supervised by a
32	physician has been unsuccessful for at least eighteen (18)
33	consecutive months.
34	(b) An insurer that issues an accident and sickness insurance
35	policy may not provide coverage for a surgical treatment of
36	morbid obesity for an insured who is less than twenty-one (21)
37	years of age unless two (2) physicians licensed under IC 25-22.5
38	determine that the surgery is necessary to:
39	(1) save the life of the insured; or
40	(2) restore the insured's ability to maintain a major life
41	activity (as defined in IC 4-23-29-6);
42	and each physician documents in the insured's medical record the



1	reason for the physician's determination.
2	SECTION 9. IC 27-13-7-14.5 IS AMENDED TO READ AS
3	FOLLOWS [EFFECTIVE JULY 1,2005]: Sec. 14.5. (a) As used in this
4	section, "health care provider" means a:
5	(1) physician licensed under IC 25-22.5; or
6	(2) hospital licensed under IC 16-21;
7	that provides health care services for surgical treatment of morbid
8	obesity.
9	(b) As used in this section, "morbid obesity" means:
10	(1) a weight of at least two (2) times the ideal weight for frame,
11	age, height, and gender as specified in the 1983 Metropolitan Life
12	Insurance tables;
13	(2) (1) a body mass index of at least thirty-five (35) kilograms per
14	meter squared with comorbidity or coexisting medical conditions
15	such as hypertension, cardiopulmonary conditions, sleep apnea,
16	or diabetes; or
17	(3) (2) a body mass index of at least forty (40) kilograms per
18	meter squared without comorbidity.
19	For purposes of this subsection, body mass index equals weight in
20	kilograms divided by height in meters squared.
21	(c) Except as provided in subsection (d), a health maintenance
22	organization that provides coverage for basic health care services under
23	a group contract shall offer coverage for nonexperimental, surgical
24	treatment by a health care provider of morbid obesity:
25	(1) that has persisted for at least five (5) years; and
26	(2) for which nonsurgical treatment that is supervised by a
27	physician has been unsuccessful for at least eighteen (18)
28	consecutive months.
29	(d) A health maintenance organization that provides coverage
30	for basic health care services may not provide coverage for
31	surgical treatment of morbid obesity for an enrollee who is less
32	than twenty-one (21) years of age unless two (2) physicians licensed
33	under IC 25-22.5 determine that the surgery is necessary to:
34	(1) save the life of the enrollee; or
35	(2) restore the enrollee's ability to maintain a major life
36	activity (as defined in IC 4-23-29-6);
37	and each physician documents in the enrollee's medical record the
38	reason for the physician's determination.
39	SECTION 10. [EFFECTIVE JULY 1, 2005] (a) IC 5-10-8-7.7, as
40	amended by this act, applies to a self-insurance program or a
41	contract with a prepaid health care delivery plan that is
42	established, entered into, delivered, amended, or renewed after



1	June 30, 2005.	
2	(b) IC 27-8-14.1-4, as amended by this act, applies to an accident	
3	and sickness insurance policy that is issued, delivered, amended, or	
4	renewed after June 30, 2005.	
5	(c) IC 27-13-7-14.5, as amended by this act, applies to a health	
6	maintenance organization contract that is entered into, delivered,	
7	amended, or renewed after June 30, 2005.	
8	SECTION 11. [EFFECTIVE UPON PASSAGE] (a) IC 20-5-13-11,	
9	as added by this act, does not apply to a contract that:	
10	(1) was executed before the effective date of this SECTION;	
11	(2) takes effect not later than the effective date of this	
12	SECTION; and	
13	(3) requires a governing body of a school corporation to allow	
14	the sale of:	
15	(A) soft drinks and similar beverages; and	
16	(B) food;	
17	with no or low nutritional value, as defined by the United	U
18	States Department of Agriculture, from vending machines or	
19	other dispensing units during school hours.	
20	However, the governing body may not renew a contract described	
21	in this SECTION and, after the contract expires, must comply with	
22	IC 20-5-13-11, as added by this act.	
23	(b) This SECTION expires July 1, 2010.	
24	SECTION 12. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding	_
25	IC 20-5-13-11(c), as added by this act, the following percentages of	
26	foods and beverages sold at school or on school grounds must	
27	qualify as a healthy food or a healthy beverage, as described in	
28	IC 20-5-13-11(c), as added by this act:	V
29	(1) Twenty percent (20%), beginning July 1, 2005, through	
30	June 30, 2006.	
31	(2) Thirty-five percent (35%), beginning July 1, 2006, through	
32	June 30, 2007.	
33	(b) This SECTION expires July 1, 2007.	
34	SECTION 13. An emergency is declared for this act.	



### COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 360, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, delete lines 28 through 42.

Page 3, delete lines 1 through 7.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 360 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 10, Nays 0.







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#### SENATE MOTION

Madam President: I move that Senate Bill 360, which is eligible for third reading, be returned to second reading for purposes of amendment.

**MILLER** 

#### SENATE MOTION

Madam President: I move that Senate Bill 360 be amended to read as follows:

Page 2, line 24, delete "nineteen" and insert "twenty-one (21)".

Page 2, line 25, delete "(19)".

Page 2, line 27, delete "individual." and insert "individual and each physician documents on the patient's medical chart the reason the physician determined that the surgery is necessary to save the life of the individual."

Page 2, between lines 27 and 28, begin a new paragraph and insert: "SECTION 2. IC 16-18-2-240.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 240.5. "Morbid obesity", for purposes of IC 16-40-3, has the meaning set forth in IC 16-40-3-1.

SECTION 3. IC 16-40-3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 3. Reporting of Deaths or Complications From Morbid Obesity Surgeries

- Sec. 1. As used in this chapter, "morbid obesity" means:
  - (1) a body mass index of at least thirty-five (35) kilograms per meter squared, with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes; or
  - (2) a body mass index of at least forty (40) kilograms per meter squared without comorbidity.

For purposes of this section, body mass index is equal to weight in kilograms divided by height in meters squared.

- Sec. 2. (a) A physician who is licensed under IC 25-22.5 and who performs a surgical treatment for the treatment of morbid obesity shall:
  - (1) monitor the patient for five (5) years following the patient's surgery; and

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- (2) report:
  - (A) to; and
  - (B) in a manner prescribed by;

the state department any death or serious complication of a patient who receives surgical treatment for morbid obesity.

- (b) The report required in subsection (a) must include the following information:
  - (1) The gender of the patient.
  - (2) The name of the physician who performed the surgery.
  - (3) The location in which the surgery was performed.
  - (4) Information concerning the death or complication and the circumstances behind the death or complication.
- Sec. 3. (a) The state department shall collect and maintain the information reported to the state department under section 2 of this chapter.
- (b) The records under subsection (a)(2) are public records and are subject to public inspection. However, the state department may not release any information in the records that the state department determines may identify the patient's identity.
- Sec. 4. A physician who knowingly violates this chapter may be subject to disciplinary sanctions under IC 25-1-9 as if the physician had knowingly violated a rule adopted by the medical licensing board under IC 25-22.5-2-7.
- Sec. 5. The state department shall adopt rules under IC 4-22-2 necessary to implement this chapter.
  - Sec. 6. This chapter expires June 30, 2010.".

Page 3, line 11, delete "nineteen (19) and insert "twenty-one (21)".

Page 3, line 14, delete "individual." and insert "individual and each physician documents on the patient's medical chart the reason that the physician determined that the surgery is necessary to save the life of the individual."

Page 4, line 3, delete "nineteen (19)" and insert "twenty-one (21)".

Page 4, line 5, delete "individual." and insert "individual and each physician documents on the patient's medical chart the reason that the physician determined that the surgery is necessary to save the life of the individual.".

Renumber all SECTIONS consecutively.

(Reference is to SB 360 as printed February 4, 2005.)

**MILLER** 











### SENATE MOTION

Madam President: I move that Senate Bill 360 be amended to read as follows:

Page 2, line 26, after "to" insert ":

(1)".

Page 2, line 27, delete "individual." and insert "covered individual;

(2) restore the covered individual's ability to maintain a major life activity (as defined in IC 4-23-29-6).".

Page 3, line 13, after "to" insert ":

**(1)**".

Page 3, line 14, delete "individual." and insert "insured; or

(2) restore the insured's ability to maintain a major life activity (as defined in IC 4-23-29-6).".

Page 4, line 4, after "to" insert ":

(1)".

Page 4, line 5, delete "individual." and insert "enrollee; or

(2) restore the enrollee's ability to maintain a major life activity (as defined in IC 4-23-29-6).".

(Reference is to SB 360 as printed February 4, 2005.)

SIMPSON





#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 360, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Page 1, line 3, delete ":" and insert "covered under a health care plan.".

Page 1, delete lines 4 through 9.

Page 2, line 26, delete "is necessary to save the life".

Page 2, delete lines 27 through 28.

Page 2, line 32, delete "." and insert ";

and each physician documents in the covered individual's medical record the reason for the physician's determination.".

Page 3, line 17, delete "a" and insert "the patient.".

Page 3, delete line 18.

Page 3, line 23, delete "in which" and insert "where".

Page 3, line 25, delete "behind" and insert "in which".

Page 3, line 25, delete "." and insert "occurred.".

Page 3, line 29, delete "records" and insert "reports made".

Page 3, line 29, delete "subsection (a)(2)" and insert "section 2(a)(2) of this chapter".

Page 3, line 31, after "information" insert "contained".

Page 3, line 31, delete "records" and insert "reports".

Page 3, line 32, delete "identify" and insert "reveal".

Page 3, between lines 39 and 40, begin a new paragraph and insert: "SECTION 4. IC 20-5-13-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) Before July 1, 2006, each school board shall establish a coordinated school health advisory council. The advisory council shall develop a local wellness policy that complies with the requirements under federal Public Law 108-265 and

IC 5-22-15-24(c). The advisory council must hold at least one (1) hearing that allows public testimony.

(b) The school board shall appoint the members of the advisory council, which must include parents, food service directors and staff, students, nutritionists or certified dietitians, health care professionals, school board members, a school administrator, and representatives of interested community organizations. However,

a person who represents a food manufacturer or marketer or a

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person with a conflict of interest or a financial interest in selling food in schools may not serve on the advisory council.

- (c) The school board shall adopt a school district policy on child nutrition and physical activity that takes into consideration the advisory council's recommendations.
- (d) The department shall, in consultation with the state department of health, provide technical assistance to coordinated school health advisory councils, including providing information on health, nutrition, and physical activity, through educational materials and professional development opportunities. The department shall provide the information given to a coordinated school health advisory council under this subsection to a school or parent upon request.

SECTION 5. IC 20-5-13-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) This section does not apply to a food or beverage item that is:

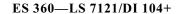
- (1) part of a school lunch program or a school breakfast program;
- (2) sold in an area that is not accessible to a student;
- (3) sold after normal school hours; or
- (4) sold or distributed as part of a fundraiser conducted by students, teachers, school groups, or parent groups, if the food or beverage is not intended for student consumption during the school day.
- (b) A vending machine at an elementary school that dispenses food or beverages may not be accessible to a student.
- (c) At least fifty percent (50%) of the foods and beverages available for sale at school or on the school grounds must qualify as a healthy food or a healthy beverage. Food and beverage items must meet the following qualifications:
  - (1) The following do not qualify as healthy beverages:
    - (A) Soft drinks, punch, iced tea, and coffee.
    - (B) Fruit or vegetable based drinks that contain less than fifty percent (50%) real fruit or vegetable juice or that contain additional caloric sweeteners.
    - (C) Except for low-fat and fat-free chocolate milk, drinks that contain caffeine.
  - (2) The following qualify as healthy beverages:
    - (A) Fruit or vegetable based drinks that contain at least fifty percent (50%) real fruit or vegetable juice or that do not contain additional caloric sweeteners.

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- (B) Water and seltzer water that do not contain additional caloric sweeteners.
- (C) Low-fat and fat-free milk, including chocolate milk, soy milk, rice milk, and other similar dairy and nondairy calcium fortified milks.
- (3) Foods that meet the following standards are considered healthy foods:
  - (A) Not more than thirty percent (30%) of their total calories are from fat.
  - (B) Not more than ten percent (10%) of their total calories are from saturated and trans fat.
  - (C) Not more than thirty-five percent (35%) of their weight is from sugars that do not occur naturally in fruits, vegetables, or dairy products.
  - (D) Are limited to the following portion sizes:
    - (i) One and one quarter (1.25) ounces for potato chips, crackers, popcorn, cereal, trail mixes, nuts, seeds, dried fruit, and jerky.
    - (ii) Two (2) ounces for cookies and cereal bars.
    - (iii) Three (3) ounces for bakery items, including pastries, muffins, and donuts.
    - (iv) Three (3) fluid ounces for frozen desserts, including ice cream.
    - (v) Eight (8) ounces of nonfrozen yogurt.
    - (vi) Twelve (12) ounces for beverages, except water.
    - (vii) Entree items and side dish items, including french fries and onion rings, may not exceed the portions for those foods when served as part of the school lunch program or school breakfast program.

SECTION 6. IC 20-10.1-4-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.5. (a) This section does not apply to:** 

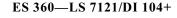
- (1) students who are in half-day kindergarten; or
- (2) a student who has a medical condition that precludes participation in the daily physical activity provided under this section.
- (b) Beginning in the 2005-2006 school year, the governing body of each school corporation shall provide daily physical activity for students in elementary school. The physical activity must be consistent with the curriculum and programs developed under IC 20-1-1.1-7 and may include the use of recess. On a day when

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there is inclement weather or unplanned circumstances have shortened the school day, the school corporation may provide physical activity alternatives or elect not to provide daily physical activity.".

Page 4, line 25, delete "necessary to save the life of the".

Page 4, delete lines 26 through 27.

Page 4, line 31, delete "." and insert ";

and each physician documents in the insured's medical record the reason for the physician's determination.".

Page 5, line 21, delete "is necessary to save".

Page 5, delete lines 22 through 23.

Page 5, line 24, delete "that the surgery".

Page 5, line 27, delete "." and insert ";

and each physician documents in the enrollee's medical record the reason for the physician's determination.".

Page 5, line 28, delete "IC 5-10-8-7.7(f)," and insert "IC 5-10-8-7.7,".

Page 5, line 29, delete "added" and insert "amended".

Page 5, line 32, delete "IC 27-8-14.1-4(b)," and insert "IC 27-8-14.1-4,".

Page 5, line 32, delete "added" and insert "amended".

Page 5, line 35, delete "IC 27-13-7-14.5(d)," and insert "IC 27-13-7-14.5,".

Page 5, line 35, delete "added" and insert "amended".

Page 5, after line 37, begin a new paragraph and insert:

"SECTION 10. [EFFECTIVE UPON PASSAGE] (a) IC 20-5-13-11, as added by this act, does not apply to a contract that:

- (1) was executed before the effective date of this SECTION;
- (2) takes effect not later than the effective date of this SECTION; and
- (3) requires a governing body of a school corporation to allow the sale of:
  - (A) soft drinks and similar beverages; and
  - (B) food;

with no or low nutritional value, as defined by the United States Department of Agriculture, from vending machines or other dispensing units during school hours.

However, the governing body may not renew a contract described in this SECTION and, after the contract expires, must comply with IC 20-5-13-11, as added by this act.

(b) This SECTION expires July 1, 2010.

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SECTION 11. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 20-5-13-11(c), as added by this act, the following percentages of foods and beverages sold at school or on school grounds must qualify as a healthy food or a healthy beverage, as described in IC 20-5-13-11(c), as added by this act:

- (1) Twenty percent (20%), beginning July 1, 2005, through June 30, 2006.
- (2) Thirty-five percent (35%), beginning July 1,2006, through June 30, 2007.
- (b) This SECTION expires July 1, 2007.

SECTION 12. An emergency is declared for this act.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 360 as reprinted March 1, 2005.)

BECKER, Chair

Committee Vote: yeas 7, nays 2.

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